



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,457	12/31/2001	Michael T. Morman	KCC 4845 (KC# 16,984)	4817

7590 08/05/2003
Senniger, Powers, Leavitt & Roedel
One Metropolitan Square, 16th Floor
St. Louis, MO 63102

EXAMINER

REICHLER, KARIN M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 08/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/037,457

Applicant(s)

MORMAN ET AL.

Examiner

Karin M. Reichle

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12-31-01, 7-24-02.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 44-85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 44-85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12-31-01, 4-3-02 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other:

Art Unit: 3761

DETAILED ACTION

Specification

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For Example:

Drawings

2. The drawings filed 04-03-02 have been placed in the file but are not approved, see following objection.
3. The drawings are objected to because in Figure 1, there is an unnumbered line in the right corner. In Figure 2, the line from 1 should either be an arrow or should extend all the way to the structure it denotes. In Figure 1, the line from the numerals 3, 6, 7, 8, and 17 should be dashed to denote underlying structure. Also in Figures 3-4 the number 1 is used to denote a structure different from the structure it denotes in Figures 1-2. The numeral should be used consistently. Also Figures 3-4 should be labeled as Prior Art. Again the lines from 6(right-hand) and 8 should be dashed. Figure 3 is inconsistent with the description thereof on page 3, i.e. it is partly in

Art Unit: 3761

section. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claims 46-49 and 67-71 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Description

5. The abstract of the disclosure is objected to because terminology which can be inferred and legal terminology, i.e. "The present invention" and "comprises", should be avoided.

Correction is required. See MPEP § 608.01(b).

6. The use of the trademark ASPUN(R), page 14, KRATON(R), AHCOVEL(R) and GLUCOPON(R), page 15, PEBAX(R), page 17, KRATON(R), LYCRA(R), page 18, PEBAX(R), HYTREL(R), AFFINITY(R), page 19, EXXPOL(R), EXACT(R), ENGAGE(R),

Art Unit: 3761

ASPUN(R), page 22, has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Trademarks should be shown in all capital letters or with a trademark symbol, not both.

7. The disclosure is objected to because of the following informalities: 1) In Figure 2, what is the undenoted layer between the chassis and the body? 2) The Summary of the Invention section, i.e. a description of the claimed invention, and the invention of the claims are not commensurate, see MPEP 608.01(d) and 1302.01. 3) The description of Figure 3 on page 3 is inconsistent with the Figure, see discussion supra. 4) On page 2, line 11, "is chassis" should be --chassis is--. 4) On page 11, line 16, "ultra sonic" should be --ultrasonic--. Appropriate correction is required.

Claim Objections

8. Claims 44-65 and 67-85 are objected to because of the following informalities: in claim 44, line 9, "the" should be --a--. In claims 45-65, line 1, "A" should be --The--. The last objection also applies to similar language in claims 67-85. Appropriate correction is required.

Art Unit: 3761

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 44-58, 60-79 and 81-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogt et al '638.

Claims 44-45, 63-64 and 66: See Figures 2-3 and 5, paragraph bridging pages 3-4, page 5, last three full paragraphs and page 6, lines 15-20 of the instant specification, col. 1, lines 6-7, col. 4, lines 20-25, col. 5, lines 17-44 and 63-64, col. 6, lines 46 et seq (It is noted that the American

Art Unit: 3761

Heritage Dictionary defines "hydrophilic" as "Having an affinity for, absorbing...water."), col. 7, line 34-col. 8, line 51, col. 9, lines 50-60, col. 10, line 45-col. 11, line 21, col. 11, lines 32-50, col. 12, lines 3-13, claim 8, i.e. the absorbent article is 10, the stretchable multilayer chassis is 26 comprising an inner liner and outer cover both of which are stretchable at least laterally, see col. 7, line 34-col. 8, line 51, the absorbent body is liner 24, surge layer 78, tissue wrapsheet 40, 42 and core 44(claim 1) or 78, 40, 42, 44(claim 66) which body is affixed along at least a portion of its outer surface to the inner surface of the chassis by adhesive 66 and 68 or 68, 94 and 96, and the chassis is stretchable independent of the absorbent body, see col. 11, lines 33-61, col. 12, lines 3-13 and 45 et seq and col. 13, lines 1-5. It is noted that a monolithically formed wrapsheet is not claimed. The elements 40 and 42 form a tissue wrap sheet. It is further claimed the absorbent article is disposable, see paragraph bridging pages 5-6 of the instant specification. Vogt is silent as to the absorbent article being disposable as is claimed, i.e. not intended for reuse. The Vogt reference does disclose it is directed to the field of absorbent articles such as diapers and that such absorbent articles are well known. It is also well known in the absorbent article art that such articles are either disposable or reuseable. It is further noted that the materials from which the Vogt device are made do not appear to be of the nature which can be reused, i.e. washed or laundered. It is also known that absorbent articles are disposable for the purposes of convenience, i.e. don't have to wash or launder. Therefore to make the absorbent article of Vogt et al disposable, if not already, would be obvious to one of ordinary skill in the art in view of the recognition that it is well known to make such articles disposable and the disclosure of Vogt et al

Art Unit: 3761

to be directed to the field of absorbent articles as well known. It would also be obvious to make the absorbent article of Vogt et al disposable, if not already, in view of the recognition that such would be more convenient or time efficient or time economical than a reuseable article and the desire of efficiency in any device.

Claims 46-49 and 67-71: It is noted that the terminology "about" allows some leeway from the dimension it describes. See Figures 1-3 and 5, elements 68, 66, or 68, 94, 96, col. 11, lines 7-21, col. 11, lines 38-61, col. 12, lines 11-13, i.e. the lines of adhesive as shown extend both longitudinally and laterally, can also be intermittent lines of adhesive, in Figure 3, lines 68, 94 and 96 are optional, the lines of adhesive as shown and disclosed affix less than about 25% of the surface area of the outer surface of the absorbent body to the inner surface of the chassis.

Claims 50-54, 60-62, 72-75 and 81-83: see col. 7, lines 34-col. 8, line 51, i.e. the outer cover can be multiple layers of extensible material or resiliently extensible material, i.e elastic material, the outer cover can be composite elastic neck bonded material as taught by incorporated Morman '992, i.e an innermore layer can be a neckable or extensible material or it can be elastic material while the outermore layer can be elastic material or it can be neckable or extensible material, respectively.

Claims 55-58 and 76-79: see col. 7, lines 60-61, col. 8, lines 11-12, col. 8, lines 21-29.

Claims 65 and 85: see col. 10, lines 45-48.

Claim 84: see col. 9, lines 50-61.

Art Unit: 3761

11. Claims 59 and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogt et al in view of Divo et al, PCT '714.

Applicant claims an outer cover comprising spunbond polypropylene laminated with an SIS adhesive which Vogt et al does not teach. However see portions of Vogt cited supra, i.e. outer cover of Vogt et al is spunbond polypropylene which is laminated to elastic by pressure sensitive adhesive to form composite elastic laminate, see, e.g., col. 7, line 54-col. 8, line 5 of Vogt and thereby, col. 4, lines 5-12 of Morman '992. See also Divo et al at col. 8, lines 6-33, and col. 10, lines 8-15, i.e. SIS pressure sensitive adhesive used to attach nonelastic nonwoven layer to elastic layer to form composite elastic laminate. To substitute the SIS pressure sensitive adhesive as taught by Divo et al for the pressure sensitive adhesive of Vogt et al would be obvious, see In re Siebentritt, 54 CCPA 1083, i.e. two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to render such substitution obvious.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other prior art cited shows various surface areas of the core affixed relative to the chassis surface areas.

Art Unit: 3761

13. Any inquiry concerning this communication should be directed to K. M. Reichle at telephone number 703-308-2617. The Examiner's regular work schedule is Monday-Thursday. The Official RightFAX number is 703-872-9302.

K.M. Reichle
KIM REICHEL
EXAMINER

KMR

July 28, 2003